

1 L. Paul Mankin (SBN 264038)
2 Nicholas Dahl (SBN 320777)
3 Law Office of Paul Mankin, APC
4 4655 Cass St., Ste. 410
5 San Diego, CA 92109
6 Phone: (800)-219-3577
7 Facsimile: (323) 207-3885
8 pmankin@paulmankin.com
9 ndahl@paulmankin.com
10 Attorney for Plaintiff
11 Samuel McDuffie

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL MCDUFFIE, } Case No.:
Plaintiff, } Amount to not exceed \$25,000
vs. } **COMPLAINT**
CAPITAL ONE FINANCIAL GROUP, }
and DOES 1 through 10 inclusive, }
Defendant. }

1. Violation of the Rosenthal
Fair Debt Collection
Practices Act;
2. Violation of the Telephone
Consumer Protection Act.

INTRODUCTION

1. This is an action for damages brought by an individual consumer for
Defendant's violations of the Fair Debt Collection Practices Act, Cal Civ. Code
§1788, *et seq.* (hereinafter "RFDCPA") which prohibits debt collectors from
engaging in abusive, deceptive, and unfair practices. Ancillary to the claims

1 above, Plaintiff further alleges claims for Defendant's violations of the Telephone
2 Consumer Protection Act., 47 U.S.C. §227, *et seq.* (hereinafter "TCPA").
3

4 **PARTIES**

5 2. Plaintiff Samuel McDuffie ("Plaintiff"), a natural person who at all times
6 herein mentioned was a resident of the City of Brentwood, County of Contra
7 Costa, and State of California and is a "debtor" as defined by Cal. Civ. Code
8 §1788.2(h).

9 3. At all relevant times herein, Defendant, CAPITAL ONE FINANCIAL
10 GROUP (hereinafter "Defendant") was a company engaged, by use of mails and
11 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
12 "consumer debt" as defined by Cal. Civ. Code §1788.2(f). Defendant regularly
13 attempts to collect debts alleged to be due another, and therefore is a "debt
14 collector" as defined by the RFDCPA, Cal. Civ. Code §1788.2(c).

15 4. Plaintiff does not know the true names and capacities, whether corporate,
16 partnership, associate, individual or otherwise, of Defendants sued herein as Does
17 1 through 10, inclusive, and therefore names said Defendants under provisions of
18 *Section 474 of the California Code of Civil Procedure.*

19 5. Plaintiff is informed and believes, and on that basis alleges that Defendants
20 Does 1 through 10 are in some manner responsible for acts, occurrences and
21 transactions set forth herein and are legally liable to Plaintiff.

22 **FACTUAL ALLEGATIONS**

23 6. At various and multiple times prior to the filing of the instant complaint,
24 including within the one year preceding the filing of this complaint, Defendant
25 contacted Plaintiff in an attempt to collect an alleged outstanding credit card debt.

26 7. This alleged financial obligation was the result of a "consumer credit
27 transaction", as defined by Cal. Civ. Code §1788.2(e), and is therefore a
28 "consumer debt", as defined by Cal. Civ. Code §1788.2(f).

1 8. Defendant has regularly placed calls to Plaintiff in its attempt to collect the
2 alleged debt via Plaintiff's cellular phone.

3 9. Within one year prior to the filing of this action, Defendant caused
4 Plaintiff's telephone to ring repeatedly and continuously to annoy Plaintiff.
5 Defendant communicated with Plaintiff with such frequency as to be unreasonable
6 under the circumstances and to constitute harassment. The frequency and pattern
7 of Defendant's telephone calls to Plaintiff evidences Defendant's intent to harass
8 Plaintiff.

9 10. On most days when Defendant attempts to contact or contacts Plaintiff,
10 Defendant calls Plaintiff three or more times a day.

11 11. Plaintiff has repeatedly demanded that Defendant stop contacting him.

12 12. At all times relevant to this action, while conducting business in California,
13 Defendant has been subject to, and required to abide by, the laws of the United
14 States, which included the TCPA and its related regulations that are set forth at 47
15 C.F.R. § 64.1200 ("TCPA Regulations"), as well as the opinions, regulations and
16 orders issued by the courts and the FCC implementing, interpreting and enforcing
17 the TCPA and the TCPA regulations.

18 13. At all times relevant to this action, Defendant owned, operated and or
19 controlled an "automatic telephone dialing system" as defined by TCPA 47 U.S.C.
20 § 227(a)(1) that originated, routed and/or terminated telecommunications.

21 14. Within four years prior to the filing of this action, Defendant called Plaintiff
22 at Plaintiff's cellular telephone number multiple times using an artificial
23 prerecorded voice or using equipment which has the capacity to store or produce
24 telephone numbers to be called, using random or sequential number generator and
25 to dial such numbers, also known as an "automatic telephone dialing system" as
26 defined by TCPA 47 U.S.C. § 227(a)(1)(A) and (B). The frequency of the
27 telephone calls placed to Plaintiff's cellular telephone number indicate the use of
28 an "automatic telephone dialing system."

15. On November 16, 2020, Defendant received a written cease and desist letter sent by certified mail from Plaintiff. Despite receipt of this letter, Defendant contacted Plaintiff numerous times after its November 16, 2020 receipt of the letter. These calls violate the RFDCPA and TCPA, as Defendant contacted a consumer in an attempt to collect a debt after receipt of a written cease and desist.

16. Defendant never received Plaintiff's consent to call Plaintiff on Plaintiff's cellular telephone, to the extent it ever existed, using an "automatic telephone dialing system" or an "artificial or prerecorded voice" as defined in 47 U.S.C. § 227 (a)(1).

17. Even assuming arguendo that Defendant did have consent to call Plaintiff on Plaintiff's cellular telephone using an ATDS, that consent was subsequently revoked by Plaintiff.

18. At no time have Plaintiff and Defendant had an “established business relationship” as defined by 47 U.S.C. § 227(a)(2).

19. Defendant is not a tax-exempt nonprofit organization.

**COUNT I: VIOLATION OF THE ROSENTHAL FAIR DEBT
COLLECTION PRACTICES ACT**

20. Plaintiff reincorporates paragraphs 1 through 19 as if fully written herein.

21. Defendant's conduct violated the RFDCPA in multiple ways, including but not limited to:

- a) Communicating, by telephone or in person, with plaintiff with such frequency as to be unreasonable and to constitute a harassment to Plaintiff under the circumstances (Cal. Civ. Code §1788.11(c));
- b) Causing a telephone to ring repeatedly or continuously to annoy Plaintiff (Cal. Civ. Code §1788.11(d));
- c) Committed any conduct the natural consequence of which is to harass, oppress, or abuse any person (Cal. Civ. Code § 1692(d));

d) Caused the telephone to ring or engaged any person in telephone conversations repeatedly (Cal. Civ. Code § 1692d(5)).

22. As a result of the above violations of the RFDCPA, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

23. § 1788.17 of the RFDCPA mandates that every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code statutory regulations contained within the FDCPA, 15 U.S.C. § 1692d, and § 1692d(5).

24. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willingly.

**COUNT II: VIOLATION OF THE TELEPHONE CONSUMER
PROTECTION ACT**

26. Plaintiff reincorporates by reference all of the preceding paragraphs.

27. Defendant's violation of the TCPA was willful. Defendant's violation of the TCPA was willful because Plaintiff requested that Defendant cease calling Plaintiff by issuing a cease and desist letter, which Defendant received on November 16, 2020. Despite its receipt of the cease and desist letter, Defendant continued to contact Plaintiff.

28. The foregoing acts and omissions of Defendant constitute numerous and multiple

negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

29. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff is

1 entitled an award of \$500.00 in statutory damages, for each and every violation,
2 pursuant to 47 U.S.C. § 227(b)(3)(B).

3 30. The foregoing acts and omissions of Defendant constitute numerous and
4 multiple

5 knowing and/or willful violations of the TCPA, including but not limited to each
6 and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

7 31. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
8 227 *et seq.*,

9 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
10 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

11 32. Plaintiff is entitled to and seeks injunctive relief prohibiting such conduct in
12 the future.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
15 Defendant for the following:

16 A. Actual damages;
17 B. Statutory damages;
18 C. Costs and reasonable attorney's fees; and
19 D. For such other and further relief as may be just and proper.

21 **PLAINTIFF HEREBY REQUESTS A JURY TRIAL**

24 Date: February 3, 2021

LAW OFFICE OF PAUL MANKIN, APC

26 L. Paul Mankin

27 L. Paul Mankin, Esq.
28 Attorney for Plaintiff